

SENATE BILL No. 330

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-3-3-6; IC 31-14-13.

Synopsis: Custody after paternity is established. Provides that in a custody proceeding held after paternity is established, a court may: (1) award joint legal custody of a child if the court determines joint legal custody would be in the best interests of the child; (2) tax as costs payment of travel and other expenses for the presence of an individual at the proceeding; (3) seek the advice of professional personnel; (4) name a temporary custodian under certain conditions; (5) upon request, order an investigation and report concerning custodial arrangements of the child; (6) order a custodian to obtain counseling for the child; (7) order continuing supervision over a case; and (8) order that an interview, report, or investigation not be public record. Requires the court to: (1) determine questions of law and fact without a jury; and (2) if an individual granted custody moves the individual's residence under certain conditions, hold a hearing upon the request of either party to review and modify, if appropriate, the custody, parenting time, and support orders. Requires the court to consider certain factors in awarding joint legal custody of a child and in modifying a child custody order. Provides that: (1) the custody proceeding must comply with the Indiana Rules of Civil Procedure; and (2) a custodian may determine the child's upbringing. Repeals duplicate provisions concerning: (1) the authority of the custodial parent to determine the child's upbringing; and (2) continuing supervision of a case. Makes certain other changes.

Effective: July 1, 2006.

Broden

January 10, 2006, read first time and referred to Committee on Judiciary.



C
o
p
y

Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 330

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-3-3-6, AS AMENDED BY P.L.68-2005,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2006]: Sec. 6. (a) The surviving parent of a minor does not
4 have the right to custody of the minor without a proceeding authorized
5 by law if the parent was not granted custody of the minor in a
6 dissolution of marriage decree **or under IC 31-14-13 after paternity**
7 **has been established** and the conditions specified in this section exist.

8 (b) If:

9 (1) the surviving parent, at the time of the custodial parent's death,
10 had required supervision during parenting time privileges granted
11 under a dissolution of marriage decree **or under IC 31-14**
12 involving the minor; or

13 (2) the surviving parent's parenting time privileges with the minor
14 had been suspended at the time of the death of the custodial
15 parent;

16 the court on petition by any person, including a temporary custodian
17 named under **IC 31-14-13-4.5 or IC 31-17-2-11** (or IC 31-1-11.5-27

2006

IN 330—LS 6729/DI 110+



C
o
p
y

before its repeal), or on the court's own motion, may appoint a temporary guardian for the minor for a specified period not to exceed sixty (60) days.

(c) If a petition is filed under this section, a court shall appoint a guardian ad litem (as defined in IC 31-9-2-50) or a court appointed special advocate (as defined in IC 31-9-2-28) for the child. A guardian ad litem or court appointed special advocate appointed under this section serves until removed by the court.

(d) If a temporary guardian is appointed without notice and the minor files a petition that the guardianship be terminated or the court order modified, the court shall hold a hearing and make a determination on the petition at the earliest possible time.

(e) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court.

(f) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

(g) The court shall appoint a guardian under this article if the court finds that the surviving parent is not entitled to the right of custody of the minor.

SECTION 2. IC 31-14-13-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.3. Proceedings under this chapter must comply with the Indiana Rules of Civil Procedure.**

SECTION 3. IC 31-14-13-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.5. The court without a jury shall determine questions of law and fact.**

SECTION 4. IC 31-14-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. The court shall determine custody **and enter a custody order** in accordance with the best interests of the child. In determining the child's best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
 - (A) the child's parents;
 - (B) the child's siblings; and
 - (C) any other person who may significantly affect the child's best interest.

C
o
p
y



(5) The child's adjustment to home, school, and community.

(6) The mental and physical health of all individuals involved.

(7) Evidence of a pattern of domestic or family violence by either parent.

(8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.

SECTION 5. IC 31-14-13-2.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 2.2. (a) The court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interests of the child.**

(b) An award of joint legal custody under subsection (a) does not require an equal division of physical custody of the child.

SECTION 6. IC 31-14-13-2.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 2.3. In determining whether an award of joint legal custody under section 2.2 of this chapter would be in the best interests of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint legal custody have agreed to an award of joint legal custody. The court shall also consider:**

(1) the fitness and suitability of each of the persons awarded joint legal custody;

(2) whether the persons awarded joint legal custody are willing and able to communicate and cooperate in advancing the child's welfare;

(3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age;

(4) whether the child has established a close and beneficial relationship with both of the persons awarded joint legal custody;

(5) whether the persons awarded joint legal custody:

(A) live in close proximity to each other; and

(B) plan to continue to do so; and

(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint legal custody.

SECTION 7. IC 31-14-13-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 2.7. The court may tax as costs the payment of necessary travel and other expenses incurred by**

**C
o
p
y**



any person whose presence at the hearing the court considers necessary to determine the best interests of the child.

SECTION 8. IC 31-14-13-4.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.3. (a) The court in a custody proceeding may seek the advice of professional personnel even if the professional personnel are not employed on a regular basis by the court. The advice must be given in writing and made available by the court to counsel upon request.**

(b) Counsel may call for cross-examination of any professional personnel consulted by the court.

SECTION 9. IC 31-14-13-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.5. (a) If, in a proceeding for custody or modification of custody under this chapter, the court:**

- (1) requires supervision during the noncustodial parent's parenting time privileges; or**
- (2) suspends the noncustodial parent's parenting time privileges;**

the court shall enter a conditional order naming a temporary custodian for the child.

(b) A temporary custodian named by the court under this section receives temporary custody of a child upon the death of the child's custodial parent.

(c) Upon the death of a custodial parent, a temporary custodian named by a court under this section may petition the court having probate jurisdiction over the estate of the child's custodial parent for an order under IC 29-3-3-6 naming the temporary custodian as the temporary guardian of the child.

SECTION 10. IC 31-14-13-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.7. (a) In a custody proceeding after evidence is submitted upon the petition, if a parent or the child's custodian requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by any of the following:**

- (1) The court social service agency.**
- (2) The staff of the juvenile court.**
- (3) The local probation department or the county office of family and children.**
- (4) A private agency employed by the court to make an investigation under this subsection.**

**C
o
p
y**



(b) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian. However, the child's consent must be obtained if the child is of sufficient age and capable of forming rational and independent judgments. If the requirements of subsection (c) are fulfilled, the investigator's report:

- (1) may be received in evidence at the hearing; and
- (2) may not be excluded on the grounds that the report is hearsay or otherwise incompetent.

(c) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days before the hearing. The investigator shall make the following available to counsel and to any party not represented by counsel:

- (1) The investigator's file of underlying data and reports.
- (2) Complete texts of diagnostic reports made to the investigator under subsection (b).
- (3) The names and addresses of all persons whom the investigator has consulted.

(d) Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party to the proceeding may not waive the party's right of cross-examination before the hearing.

SECTION 11. IC 31-14-13-5.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 5.2. Upon:**

- (1) the court's own motion;
- (2) the motion of a party; or
- (3) the motion of the child;

the court may order the custodian or the joint custodians of a child to obtain counseling for the child under such terms and conditions as the court considers appropriate.

SECTION 12. IC 31-14-13-5.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 5.4. (a) Except:**

- (1) as otherwise agreed by the parties in writing at the time of the custody order; and

**C
o
p
y**



(2) as provided in subsection (b);
the custodian of a child may determine the child's upbringing,
including the child's education, health care, and religious training.

(b) If the court finds after motion by a noncustodial parent that,
in the absence of a specific limitation of the custodian's authority,
the child's:

- (1) physical health would be endangered; or
- (2) emotional development would be significantly impaired;
the court may specifically limit the custodian's authority.

SECTION 13. IC 31-14-13-6 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) The court may
not modify a child custody order unless:

- (1) modification is in the best interests of the child; and
- (2) there is a substantial change in one (1) or more of the factors
that the court may consider under section 2 and, if applicable,
section 2.5 of this chapter.

(b) In making its determination, the court shall consider the
factors listed under section 2 of this chapter.

(c) The court shall not hear evidence on a matter occurring
before the last custody proceeding between the parties unless the
matter relates to a change in the factors relating to the best
interests of the child as described by section 2 and, if applicable,
section 2.5 of this chapter.

SECTION 14. IC 31-14-13-7.5 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2006]: Sec. 7.5. If both parents or all
contestants agree to a custody order or if the court finds that, in
the absence of a custody order, a child's physical health might be
endangered or the child's emotional development significantly
impaired, the court may order:

- (1) the court social service agency;
- (2) the staff of the juvenile court;
- (3) the local probation department;
- (4) the county office of family and children; or
- (5) a private agency employed by the court under this
chapter;

to exercise continuing supervision over the case to ensure that the
custodial or parenting time terms of the decree are carried out.

SECTION 15. IC 31-14-13-10 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. (a) If an individual
who has been awarded custody of a child under this chapter (or
IC 31-6-6.1-11 before its repeal) intends to move to a residence other

C
o
p
y



1 than a residence specified in the custody order that is outside Indiana
 2 or at least one hundred (100) miles from the individual's county of
 3 residence, the individual must:

- 4 (1) file a notice of that intent with the clerk of the court that
 5 issued the custody order; and
 6 (2) send a copy of the notice to each noncustodial parent.

7 **(b) Upon request of either party, the court shall set the matter**
 8 **for a hearing for the purposes of reviewing and modifying, if**
 9 **appropriate, the custody, parenting time, and support orders. The**
 10 **court shall take into account the following in determining whether**
 11 **to modify the custody, parenting time, and support orders:**

- 12 (1) The distance involved in the proposed change of residence.
 13 (2) The hardship and expense involved for noncustodial
 14 parents to exercise parenting time rights.

15 **(c) Except in cases of extreme hardship, the court may not**
 16 **award attorney's fees.**

17 SECTION 16. IC 31-14-13-10.5 IS ADDED TO THE INDIANA
 18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2006]: **Sec. 10.5. If the court finds it**
 20 **necessary to protect a child's welfare that the record of any**
 21 **interview, report, or investigation in a custody proceeding not be**
 22 **a public record, the court may make an appropriate order**
 23 **accordingly.**

24 SECTION 17. THE FOLLOWING ARE REPEALED [EFFECTIVE
 25 JULY 1, 2006]: IC 31-14-13-4; IC 31-14-13-5.

C
O
P
Y

